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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
and Their Impact Upon the)
Existing Television Broadcast)
Service)

REPLY COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA")
hereby submits its reply comments to the Notice of Proposed
Rulemaking ("Notice") in the above-captioned proceeding.

In its initial comments, NCTA applauded the Commission's
efforts to develop a comprehensive plan for the successful
implementation of high definition television ("HDTV") by the ter-
restrial broadcast industry. We pointed out, however, that while
the concept of providing broadcasters with an HDTV channel in
addition to their NTSC channel offers broadcasters an efficient,
non-disruptive means of effecting the transition to HDTV, it
presents significant complications and potential dislocations of
service for the cable industry.

During the last decade, cable television has experienced
rapid growth in channel capacity and technical capabilities that
is continuing into the '90s. At the same time, of course, the
number of available programming services -- new broadcast
stations and nonbroadcast program services -- has also grown
rapidly. Even today, the number of available programming

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services exceeds the channel capacities of most systems, requiring systems to select the programming that best meets the interests and demands of viewers in their communities. The need to make such carriage decisions will become even more acute with the doubling of the number of broadcast channels under the Commission's HDTV transition plan. As broadcasters initiate transmissions in both the NTSC and HDTV formats, some cable systems will simply lack the channel capacity, at least initially, to accommodate these signals, along with the diverse array of cable programming networks that will be vying for carriage in either or both formats.

Moreover, even with abundant channel capacity, no one can predict how rapidly the public will accept, indeed demand, the new programming and how rapidly the marketplace will make the conversion. Thus, while cable operators may wish to carry all of the stations transmitting in the HDTV format, it may be neither feasible nor desirable to do so, at least during the early phases of the transition. In any event, cable systems, like broadcast stations, will need the flexibility to structure their delivery of HDTV programming in a manner that promotes its success in the marketplace.^{1/}

1/ As NCTA discussed in its initial comments, the successful implementation of HDTV will also depend on a variety of system attributes, notably encryption capability, addressability, and extensibility for future improvements. It is also important that there be adequate field testing to ensure that the standard is capable of being effectively retransmitted over the cable distribution network. Addi-

(Footnote continues on next page)

Therefore, in light of the practical realities, NCTA made clear that requiring cable systems to carry all local HDTV broadcast signals would be inappropriate. Mandatory signal carriage rules would serve no purpose other than to burden cable operators, while doing demonstrable harm to cable programmers (who could lose carriage altogether) and cable subscribers (who would risk losing NTSC programming and diverse cable programming choices). Moreover, as NCTA pointed out, input selector circuitry (A/B switches) incorporated into the HDTV receiver would provide a practical means of ensuring that cable subscribers have access to all broadcast channels in either format. Under this approach, even if the cable system did not carry every NTSC and HDTV broadcast channel, cable subscribers could still receive such signals over-the-air.

Throughout this proceeding and through the joint efforts of Cable Labs and the Advanced Television Test Center, the cable industry has demonstrated its commitment to cooperate and work with the broadcast industry to develop appropriate HDTV standards and to ease the transition to the new HDTV environment for the public. Nevertheless, the 96 broadcast organizations that filed joint comments in this proceeding ("Broadcasters") still seek to impose an implementation plan that would bind the cable industry

(Footnote continued)

tionally, many commenters noted the importance of ensuring that the broadcast HDTV standard is compatible with other video delivery media.

alone with unrealistic and unfair signal carriage requirements at the expense of cable programmers and cable subscribers.

DISCUSSION

In their comments, the Broadcasters repeatedly call for a flexible and cautious approach to the implementation of HDTV for the broadcast industry. Urging the Commission to "stay its hand", they oppose the adoption of any construction deadlines, programming requirements, conversion requirements, or financial requirements for broadcast stations on the grounds that such rules would be inequitable, counterproductive and at best premature.^{2/} Instead, they urge the Commission to wait for "real world experience" with consumer response, equipment availability

2/ See, e.g., Broadcasters' Comments at 2, 3, 18.

Among other things, the Broadcasters argue that the Commission should afford them the freedom to program their second HDTV channel differently from their NTSC channel, at least during the early phases of the transition, and until they have had the opportunity to assess such marketplace factors as nationwide HDTV-set penetration and programming availability. They further argue against any Commission-imposed deadline for mandatory conversion at this point. The Broadcasters' suggested approach would thus allow them flexibility to provide a second, separate program service of indeterminate duration.

In pressing for maximum flexibility, however, Broadcasters threaten the very foundation of the Commission's tentative determination to award them valuable HDTV spectrum without comparative consideration. Should the Commission follow the Broadcaster's suggested path and move away from its proposed program simulcast and transitional approach, it is not at all clear why as a policy matter only existing broadcasters should be eligible to obtain HDTV channels -- or why as a legal matter a comparative hearing would not be required under the Supreme Court's Ashbacker decision and its progeny.

and other marketplace factors before even considering such requirements.

As the Broadcasters recognize, the acceptance of HDTV technology is not assured; consumers may be unwilling to purchase new HDTV receivers on a widescale basis for many years after the technology's introduction. Indeed, as the Broadcasters readily acknowledge, it may take a decade or more before HDTV receivers achieve even a one percent penetration rate.^{3/} As a result, high definition programming may not be widely viewed in the early years.

Given this uncertainty, the Broadcasters advocate a wholly flexible and discretionary approach to HDTV for their industry. But they propose to lock the cable industry into a rigid, mandatory implementation scheme. In particular, they seek assurances that, even before equipment for the first HDTV channel is purchased,^{4/} the Commission will require cable systems to carry broadcast HDTV channels. Even setting aside for the moment the First Amendment difficulties of any mandatory carriage scheme, this latest "must carry" proposal is entirely unworkable and inequitable.

3/ Broadcasters' Comments at 19. As Capital Cities/ABC notes, the full transition to HDTV could take a generation. And at least one broadcaster believes that broadcast stations should be able to operate on both the HDTV and NTSC channels indefinitely since in its view, there will always be a market for low resolution programming. See Comments of Golden Orange Broadcasting Co. Inc.

4/ Broadcasters' Comments at 39.

The transitional difficulties that the Broadcasters complain of pale in comparison to the problems that adoption of must carry requirements would cause for cable systems. Under a mandatory carriage regime, regardless of whether or when consumer acceptance of HDTV occurs, cable systems would be required to commit cable channel capacity (perhaps twice as much as currently occupied by broadcast stations), install new equipment for these new channels, and incur significant costs. Cable subscribers would be forced to subsidize high definition channels for consumers who would, for at least a decade, comprise less than one percent of the receiver population.^{5/} In addition, while broadcasters would retain the ability to transmit over their NTSC channel until HDTV has reached some threshold of acceptance by consumers, must carry rules would afford cable operators no such flexibility. Instead, given channel capacity constraints, cable operators would be forced, in many cases, to eliminate existing program offerings -- either broadcast or cable programming -- that their subscribers would value more highly.^{6/}

Moreover, granting broadcasters preferential carriage rights would give them an unfair advantage over nonbroadcast cable

5/ Indeed, the percentage of HDTV receivers owned by subscribers within any individual system could be even lower.

6/ The Broadcasters appreciate the importance of adopting the least disruptive means of implementing HDTV. In urging the Commission to limit eligibility for the new HDTV spectrum to existing broadcasters, they note the public interest in preventing disruptions in local broadcast service during the transition. Broadcasters' Comments at 12-13.

programmers -- many of which may themselves may be offering HDTV programming -- which would have to compete among themselves for carriage on the remaining available cable channels. Furthermore, if must carry rules were adopted for HDTV channels, cable operators might be forced to drop NTSC programming -- broadcast or nonbroadcast -- in order to carry HDTV channels. This could disenfranchise the 99 percent or more of television set owners who will still be NTSC viewers, thereby defeating one of the Commission's stated goals of ensuring that consumers with NTSC receivers continue to receive high quality service during the transition.^{7/}

Finally, broadcasters -- who have already received free spectrum for their NTSC channels -- will, under the Commission's transitional simulcast approach, now be receiving a second governmental subsidy in the form of free access to valuable HDTV spectrum. There is no justification -- especially since their signals will, in any event, be available over-the-air -- to grant broadcasters a third subsidy in the form of mandatory cable carriage. Cable carriage of HDTV programming can be expected to occur where it is feasible and desirable for the system to do so. Nevertheless, if ensuring access to all new HDTV broadcast signals is the goal, then we have already identified a solution

7/ Indeed, as Broadcasters point out, "at a time of low HDTV-set penetration, the broadcaster has every incentive to maintain the quality of its NTSC service, and should, therefore, be given maximum flexibility at the outset of the conversion period." Broadcasters' Comments at 29.

that would avoid all these dislocations -- requiring inclusion of input selector circuitry in HDTV receivers.

CONCLUSION

As many commenters recognize, despite the vast improvement in picture and sound quality that HDTV represents, the course of its marketplace development is hard to predict. For its part, the cable industry is committed to promoting the successful implementation of this new technology for cable subscribers. In order to accomplish this goal, cable systems should be accorded the same unfettered flexibility to respond to consumer desires and marketplace forces that the Commission intends to accord broadcast stations. Thus, while cable systems may indeed choose to carry all of the new HDTV programming, the industry should not be locked into an untimely and burdensome transition scheme. In particular, must carry requirements will be detrimental to the Commission's implementation goals and ultimately will not serve the public interest.

Respectfully submitted,

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